

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JERRELL MILLER.,

Plaintiff,

-against-

NOT FOR PUBLICATION  
ORDER

05-CV-5493 (CBA) (LB)

DEPUTY OF SECURITY BAILEY; WARDEN  
VALERIE OLIVER; COMMISSIONER MARTIN F.  
HORN, In their “official capacities,”

Defendants.

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AMON, UNITED STATES DISTRICT JUDGE:

On November 23, 2005, Plaintiff Jerrell Miller brought this action *pro se*, pursuant to 42 U.S.C. § 1983, alleging that he was unconstitutionally strip searched while in custody at Rikers Island Correctional Facility. Thereafter, the Court referred the defendants’ anticipated motion to dismiss to Magistrate Judge Lois Bloom for a Report and Recommendation (“R&R”). On April 11, 2006, the defendants first served their motion to dismiss on plaintiff. Plaintiff was given until July 7, 2006 to respond. He failed to do so, and defendants twice requested that their motion be deemed unopposed and be granted. However, before Magistrate Judge Bloom granted the motion, counsel appeared on behalf of plaintiff. Accordingly, Magistrate Judge Bloom extended the briefing schedule to give plaintiff’s counsel an opportunity to oppose the defendants’ motion.

The motion became fully briefed on February 12, 2007. On December 20, 2007, Magistrate Judge Bloom issued her R&R, recommending that plaintiff’s claims be dismissed in

their entirety. First, she recommends that plaintiff's claims should be dismissed as unexhausted.<sup>1</sup> (R&R at 4-10.) Alternatively, she recommended dismissal on substantive grounds—because plaintiff failed to allege the personal involvement of several defendants and because plaintiff had failed to adequately allege that his constitutional rights were violated.

Plaintiff had ten (10) business days from the date of the R&R within which to object. (R&R at 17 (citing 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b).) With several intervening holidays, that ten day period lapsed on January 9, 2008. No objections have been filed.<sup>2</sup> Accordingly, Magistrate Judge Bloom's R&R is hereby adopted as the opinion of the Court. Plaintiff's complaint dismissed in its entirety, and his motion to amend the complaint is denied. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status is denied for the purpose of any appeal. Coppedge v. United States, 369 U.S. 438, 444-45 (1962). The Clerk of the Court is directed to enter judgement and to close this case.

SO ORDERED.

Dated:                   Brooklyn, New York  
                                April 17, 2008

Carol Bagley Amon  
United States District Judge

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<sup>1</sup>With respect to the exhaustion issue, Magistrate Judge Bloom converted the defendants' motion to dismiss into one for summary judgment.

<sup>2</sup>As Magistrate Judge Bloom noted, “[f]ailure to file a timely objection to th[e R&R] generally waives any further judicial review.” (R&R at 17 (citing Marcella v. Capital Dist. Physician's Health Plan, Inc., 293 F.3d 42 (2d Cir. 2002) and Small v. Sec'y of Health and Human Servs., 892 F.2d 15 (2d Cir. 1989).)